

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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| In re: |) | MDL No. 1456 |
| |) | Civil Action No. 01-12257-PBS |
| |) | |
| PHARMACEUTICAL INDUSTRY |) | Subcategory No. 06-11337 |
| AVERAGE WHOLESALE PRICE |) | |
| LITIGATION |) | |
| _____ |) | |
| |) | |
| THIS DOCUMENT RELATES TO: |) | |
| <i>United States of America ex rel. Ven-A-Care of</i> |) | Judge Patti B. Saris |
| <i>the Florida Keys, Inc., by and through its principal</i> |) | |
| <i>officers and directors, Zachary T. Bentley and</i> |) | |
| <i>T. Mark Jones v. Actavis Mid Atlantic LLC, et al.</i> |) | |

AGREED MOTION FOR APPROVAL OF SETTLEMENT OF FALSE CLAIMS
ACT CASE AS TO WATSON DEFENDANTS

1.) The above-captioned matter is an action brought under the *qui tam* provisions of the federal False Claims Act, 31 U.S.C. §§3729-3733, by Relator Ven-A-Care of the Florida Keys, Inc. (the “Relator”) against Watson Pharmaceuticals, Inc. (f/k/a Schein Pharmaceuticals, Inc.) (collectively, “Watson”) (Watson together with Relator collectively the “Parties”).

2.) The Parties have reached a settlement of the remaining claims against Watson in the above action, the terms of which are set forth in the Settlement Agreement and Release attached hereto as **Exhibit A (the “Settlement Agreement”)** and provide for the dismissal of the action as to the Watson parties, with prejudice. Because this is a *qui tam* action brought by the Relator on behalf of the United States, it can only be dismissed if consented to by the Court and the United States pursuant to 31 U.S.C. § 3730 (b). The United States Department of Justice has represented to the Parties that the United States

will provide the Consent of the United States, in the form attached to the Settlement Agreement as Exhibit 1(the “U.S. Consent”); however, only after it receives payment in the amount of \$27,000,000 as provided for in the Settlement Agreement. Watson, in turn, is not required to make the payments required by the Settlement Agreement until it has assurances that the United States and the Court will consent to the dismissal and that the Court will enter the Order of Dismissal With Prejudice in the form attached to the U.S. Consent. The relief requested in this motion is intended to provide the United States and Watson with the assurances they require in order for the Parties’ settlement to be concluded.

3.) The United States Department of Justice has represented to the Parties that it will provide Counsel for the Relator with the signed U.S. Consent, in the form required by, and attached as Exhibit 1 to, the Settlement Agreement; however, it cannot be provided to Watson or filed with the Court until such time as the U.S. receives its payment pursuant to the Settlement Agreement.

4.) Accordingly, Watson and the Relator propose, and request that the Court approve, the following procedure for consummating the settlement:

a.) That the Court review the Settlement Agreement attached hereto as **Exhibit A** and conduct such proceedings, if any, as it deems appropriate in determining whether to approve the Settlement.

b.) That the Court approve the Settlement and enter the Agreed Order Approving Settlement in the form attached hereto as **Exhibit B**.

c.) That Counsel for the Relator, James J. Breen, inform Counsel for Watson promptly when he receives the duly executed U.S. Consent.

d.) That Watson pay the amounts required by, and in the time frame set forth in, the Settlement Agreement.

e.) That, upon confirmation by the United States Department of Justice that the United States' Settlement Portion in the amount of \$27,000,000 has been received by the United States, Counsel for the Relator will file the signed U.S. Consent and the Joint Stipulation of Dismissal With Prejudice in the form attached to the Settlement Agreement as **Exhibit 5**.

f.) That upon the filing of the duly executed U.S. Consent and the Stipulation of Dismissal with Prejudice, the Court will enter the Order of Dismissal with Prejudice of Claims against Watson Defendants in the attached to the Settlement Agreement as **Exhibit 6**.

WHEREFORE, to permit them to effectuate the terms of their settlement, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure and the *qui tam* provisions of the federal False Claims Act, 31 U.S.C. § 3730(b)(1), the Parties respectfully request that the Court enter the Agreed Order Approving Settlement in the form attached hereto as **Exhibit B**.

Respectfully submitted,

/s/ James J. Breen

JAMES J. BREEN

The Breen Law Firm, P.A.

5755 North Point Parkway, Suite 260

Alpharetta, GA 30022

(770) 740-0008

Counsel for Relator

/s/ James W. Matthews

JAMES W. MATTHEWS

K&L Gates LLP

State Street Financial Center

One Lincoln Street

Boston MA 02111-2950

(617) 261-3100

Counsel for Watson

Dated: December 13, 2011

CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing document, filed this 13th day of December, 2011 via the Court's ECF system, will be served today on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve for positing and notification to all parties.

/s/ James J. Breen

JAMES J. BREEN